IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1010 OF 2004

Jujav Itorin Fernandes
(since deceased through L Rs)
1A. Smt.Magdaline John Fernandes
and ors. .. Petitioners

Vs

1. Rocky Pedru Fernandes
and anr. .. Respondents
M/s Khandeparkar & Associates, for the petitioners

CORAM : D.B.BHOSALE,J.

DATE : FEBRUARY 22, 2005.

P.C.

1. Heard the learned counsel for the petitioners.

2. The petitioners have impugned the order dated 11.9.2003 by which his objection to the commissioner's report and an appointment of fresh court commissioner in the execution proceedings has been rejected and the partition is directed to be effected as per the report of the court commissioner and the map appended thereto. Mr Khandeparkar, learned counsel for the petitioners, challenged the impugned order on two grounds: firstly, the commissioner did not visit the site at all and has drawn the map only on the basis of the report of the

earlier court commissioner, and secondly, the partition effected on the basis of the commissioner's report was not proper and equitable. I perused the impugned order, the objections filed by the petitioner and the commissioner's report including the map drawn by him. It is clear from the material produced before me that the notice was issued by the commissioner to which there was no response from the petitioners. The record shows that the commissioner did visit the site and had drawn the map. Merely because the petitioners were not present at the time of carrying out the commission work, does not mean that the commissioner did not visit the site at all. It further appears that there is no dispute in respect of the measurements as shown in the commissioner's report. It is absolutely clear from the commissioner's report as also from the map that the property has been divided exactly half-half. No prejudice can be said to have been caused to the petitioners if the partition is effected in pursuance of the report of the court commissioner as shown in the map. I find no infirmity in the order. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)